

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000686-001 DT

03/10/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

STATE OF ARIZONA

DENISE BOODE

v.

JANIS C FILAS (001)

KRISTIN GENTILE WHITE

GILBERT CITY COURT
REMAND DESK-LCA-CCC

RECORD APPEAL RULE / REMAND

GILBERT MUNICIPAL COURT

Cit. No. #O2TR13909DU

Charge: 1) DUI-LIQUOR/DRUGS/VAPORS/COMBO
 2) DUI W/BAC OF .08 OR MORE
 3) EXTREME DUI-BAC .15 OR MORE

DOB: 03/21/51

DOC: 07/15/02

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Sections 12-124(A) and 13-4032.

This case has been under advisement since its assignment on January 16, 2004. This decision is made within 60 days as required by Rule 9.9, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the Gilbert City Court, and the memoranda submitted by counsel.

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The Appellant in this case is the State of Arizona. The only issue is whether the trial judge erred at the time of sentencing in this Extreme DUI case (with a prior conviction) by permitting “two for one time” in the service of the 60-day jail sentence.

At the time of sentencing on May 1, 2003, Gilbert City Court Judge David Phares ordered that the Appellee, Janis Filas, be incarcerated for a period of 60-days beginning June 6, 2003 and further ordered that “two-for-one time” would be allowed if Appellee was approved for trustee status (within the jail). Appellant argues that the Appellee Filas is not eligible for two-for-one time as the controlling statute requires that Appellee serve the entire sentence. The issue presented by the parties is a matter of statutory construction. Appellee Filas argues that the limitations within the statute [A.R.S. Section 28-1382(F)(1)] only requires that the jail sentence be served consecutively. After reviewing the statute, this Court concludes that the legislature used precise language precluding a sentence of any length other than the entire sentence. This Court must reject the Appellee’s position and remand this case for resentencing.

A.R.S. Section 28-1382(F)(1) provides the punishment for the crime of Extreme DUI with a prior conviction within 60 months:

(A Defendant) shall be sentenced to serve not less than 120 days in jail, 60 days of which shall be served consecutively, and is not eligible for probation or suspension of execution of sentence unless the entire sentence has been served.

And, A.R.S. Section 28-1382(G) provides that the sentencing judge may suspend all of the jail sentence described in the proceeding paragraph except 60-days, provided that a criminal defendant completes a court-ordered alcohol or drug screening, education or treatment program. Read together paragraphs (F) and (G) prohibit a judge from suspending anymore than 60-days of a 120 day sentence for the crime of Extreme DUI with a prior conviction.

The attorneys for both parties have focused upon the language that the 60-days to be served in paragraph (F)(1) must be served “consecutively”; however, the concluding phrase of the statute provides: “...and is not eligible for probation or suspension of execution of sentence unless the entire sentence has been served” (emphasis added).” Giving plain meaning to the language used, it appears to this Court that the phrase that the Defendant is not eligible for suspension of execution of sentence unless the entire sentence has been served, requires a sentencing court to order that the 60-day sentence be served “flat time”. That is, a defendant is not eligible for suspension of the execution of any part of the sentence, including two-for-one time credits by serving as a trustee within the jail.

This Court must conclude that the trial judge erred in allowing two-for-one time.

IT IS THEREFORE ORDERED reversing the sentence imposed in this case.

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IT IS FURTHER ORDERED remanding this matter back to the Gilbert Municipal Court for resentencing and for such other and future proceedings as may be necessary in this case.

/ s / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT